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Information on Recently Enacted Federal COBRA and Utah mini-COBRA Laws

On February 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act (ARRA). The new law provides a subsidy that may reduce the cost of COBRA and Utah mini-COBRA continuation coverage for workers who lose their jobs by 65%.

Governor Jon M. Huntsman, Jr. signed HB178 on Wednesday, March 25, 2008 to ensure that Utahns who lost their jobs at small businesses after September 1, 2008 will qualify for federal benefits that pay up to 65 percent of Utah mini-COBRA continuation coverage premiums. The subsidy is available to individuals who were involuntarily terminated without cause on or after September 1, 2008. ARRA provides premium assistance for certain individuals receiving COBRA and Utah mini-COBRA continuation coverage. The premium assistance applies to periods of continuation coverage beginning on or after February 17, 2009, and may last up to 9 months.

Quick Facts

- The bill provides a 65% subsidy for COBRA and Utah mini-COBRA continuation premiums for up to nine (9) months for workers who have been involuntarily terminated, and for their families.
- Eligible individuals simply pay 35% of the premium. ARRA treats assistance eligible individuals who pay 35 percent of their COBRA or mini-COBRA premium as having paid the full amount.
- The premium reduction for COBRA and mini-COBRA is available to "assistance eligible individuals." An "assistance eligible individual" is the employee or a member of his/her family who:
 - is eligible for COBRA or mini-COBRA coverage as a result of the employee's involuntary termination between September 1, 2008 and December 31, 2009; and
 - elects COBRA or mini-COBRA coverage.
- Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction.
- There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009. The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a premium. The premium reduction starts on March 1, 2009 for plans that charge on a calendar month basis.

- Spouses, former spouses, and dependent children are eligible for premium assistance if their coverage is through the former employee who was involuntarily terminated.
- Individuals receiving continuation coverage due to a qualifying event other than involuntary termination, such as divorce or child reaching the age at which coverage ends, are not eligible for premium assistance.
- The premium reduction for an individual ends upon:
 - eligibility of any new employer sponsored health care coverage;
 - Medicare eligibility;
 - after 9 months of the reduction; or
 - when the maximum period of coverage ends, whichever occurs first.

Individuals paying reduced COBRA or mini-COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

- The period beginning on the date that an individual was involuntarily terminated and ending on the date when federal COBRA or Utah mini-COBRA coverage starts will be disregarded for the purpose of determining whether a pre-existing condition exclusion period applies.
- If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at www.irs.gov.

Utah mini-COBRA Important Dates

- Workers who were involuntarily terminated between September 1, 2008 and February 16, 2009 – but failed to initially elect Utah mini-COBRA are given till April 17, 2009 to elect Utah mini-COBRA and receive the subsidy.
- Individuals who lost group coverage because of an involuntary termination between September 1, 2008 and September 11, 2009, applied for and were covered and coverage terminated are not eligible for a 65% federal subsidy of their Utah mini-COBRA premiums because the Utah mini-COBRA coverage was only available for six months and coverage would have terminated prior to March 1, 2009.
- Individuals who lost group coverage because of an involuntary termination between September 11, 2008 and February 16, 2009, applied for and are covered; coverage may be continued for up to 12 months. Individuals are eligible for a 65% federal subsidy of their Utah mini-COBRA premiums for up to 9 months.

- Individuals who lost group coverage because of an involuntary termination between September 1, 2008 and February 16, 2009, did not apply for Utah mini-COBRA because it was unaffordable, may apply to the former insurer or employer for coverage on or before April 17, 2009. Coverage will be effective March 1, 2009 and may continue for up to 12 months. Individuals are eligible for a 65% federal subsidy of their Utah mini-COBRA premiums for up to 9 months.

Federal COBRA Important Dates

- Individuals involuntarily terminated from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered OR who did elect COBRA, but are no longer enrolled (for example because they were unable to continue paying the premium) have a new election opportunity. This election period begins on February 17, 2009 and ends 60 days after the plan provides the required notice. This special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination). COBRA coverage elected in this special election period begins with the first period of coverage beginning on or after February 17, 2009.
- Plan administrators must provide notice about the premium reduction to individuals who have a COBRA qualifying event during the period from September 1, 2008 through December 31, 2009. Plan administrators may provide notices separately or along with notices they provide following a COBRA qualifying event. This notice must go to all individuals, whether they have COBRA coverage or not, who had a qualifying event from September 1, 2008 through December 31, 2009.

Frequently Asked Questions

Q1. Are beneficiaries of Utah mini-COBRA eligible for the premium assistance provided by the ARRA?

Beneficiaries of comparable State mini-COBRA programs who meet the definition of an assistance eligible individual may be eligible for the premium assistance. An "assistance eligible individual" is the employee or a member of his/her family who:

- is eligible for continuation coverage at any time from September 1, 2008 through December 31, 2009;
- elects continuation coverage; and
- is eligible for continuation coverage as a result of the employee's involuntary termination that occurred in the period from September 1, 2008 through December 31, 2009.

Q2. Are Utah mini-COBRA beneficiaries eligible for the additional election period provided under ARRA?

Yes. Beneficiaries in Utah mini-COBRA are eligible for an extended election period for those who experienced an involuntary termination from September 1, 2008 through February 16, 2009. Those individuals who had experienced an involuntary loss of employment in that time period and meet the definition of an assistance eligible individual can request premium assistance.

Q3. Does the ARRA change any Utah mini-COBRA requirements or time periods for the election of continuation coverage?

No. The ARRA does not change any state continuation coverage program requirements. However, ARRA does provide the opportunity for qualified beneficiaries to receive premium assistance for up to 9 months. However, ARRA does not change the election period for Utah mini-COBRA. Similarly, it does not extend the 12-month maximum length of continuation coverage under Utah mini-COBRA.

Q4. If I didn't take mini-COBRA when first offered and now want to take it, do I have to pay back premium from the time I was eligible?

If you were involuntarily terminated you may contact the former employer or insurer until April 17, 2009 to elect mini-COBRA. Coverage will be effective on March 1, 2009. You cannot elect coverage back to the first eligibility date.

Q5. Are spouses and dependents considered qualified beneficiaries and therefore eligible for the premium assistance?

ARRA specifically references the definition of a qualified beneficiary under Section 607(3) of the Employee Retirement Income Security Act (ERISA). Under ERISA, a qualified beneficiary can only be a spouse or a dependent child of a covered employee, and both must generally have been covered under the employer's plan on the day before the qualifying event. (A special rule applies for children born to or adopted by a covered employee during a period of COBRA continuation coverage. Accordingly, only a covered employee, his/her spouse, and his/her child(ren) can apply for a premium reduction.

Q6. Who has to notify the employees of the opportunity to elect the premium reduction?

Under Utah mini-COBRA, the issuer of the group health plan must provide qualified beneficiaries an election notice that contains information on how to request treatment as an assistant eligible individual.

Q7. What can I do if my former employer's group health plan tells me that I do not qualify for the COBRA premium reduction?

If your health plan finds that you are not eligible for the premium reduction, you can ask for an expedited review of that decision from the Secretary of the Department of Labor or the Secretary of the Department of Health and Human Services. The Secretary is required to make a determination regarding your appeal within 15 business days after receiving your request for review. The Department of Labor will handle appeals related to private sector employer plans that are subject to ERISA's COBRA provisions. The Center for Medicare and Medicaid Services (CMS) will handle appeals for Federal, State, and local governmental employees, as well as appeals related to Utah mini-COBRA plans. CMS expects to begin processing appeals no later than May 1, 2009, and will provide further information about where to submit appeals in the near future.

Q8. If I am eligible for the premium reduction, how long will it last?

Your premium reduction can last up to 9 months. However, it will end earlier if:

- eligibility of any new employer sponsored health care coverage;
- Medicare eligibility;
- after 9 months of the reduction; or
- when the maximum period of coverage ends, whichever occurs first.

If you continue your COBRA or Utah mini-COBRA coverage after the premium reduction period, you may have to pay the full amount of the premium. Failure to do so may result in your loss of COBRA coverage. ***Individuals paying reduced COBRA or Utah mini-COBRA premiums must notify their plans if they become eligible for coverage under another group health plan or Medicare. Failure to do so can result in a tax penalty***

Q9: How do I apply for the premium reduction?

If you were covered by an employment-based health plan on the last day of the employee's employment, the plan should provide you a notice of your eligibility to elect COBRA and to receive the premium reduction. The notice should include any forms necessary for enrollment. You may also want to contact your plan directly to ask about taking advantage of the premium reduction.

Q10: How does the 65% premium subsidy get paid to me?

You will not receive a payment. Assistance Eligible Individuals are responsible for paying only 35% of the COBRA premium for the period of coverage. The remaining 65% of the premium is reimbursed directly to the employer, plan administrator, or insurance company through a payroll tax credit.

Q11: Only part of my family elected COBRA coverage but all of us were eligible. Can I enroll the others and take advantage of the premium reduction?

Each COBRA qualified beneficiary may independently elect COBRA coverage. Moreover, even if a family member did not elect COBRA coverage when first eligible, if the individual would be an Assistance Eligible Individual (except for his or her failure to elect COBRA coverage when first eligible or except because he or she discontinued COBRA coverage before February 17, 2009), that individual gets a second opportunity to enroll and qualify for the premium reduction.

Any Utahn who is not sure where to turn for health care coverage information during these turbulent economic times should feel free to contact the Health Insurance Division of the Utah Insurance Department for information at www.insurance.utah.gov or call (801) 538-3077 or toll free in Utah (800) 439-3805.

For general information about COBRA coverage and changes to COBRA under the ARRA contact the Department of Labor at (866) 444-3272 or visit their website at www.dol.gov/COBRA. There you can find more information about who is considered to be an "assistance eligible individual," the special COBRA election opportunity under ARRA, model notices and more.